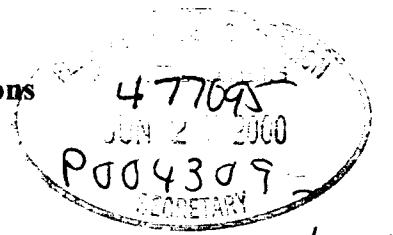


**Alternative Dispute Resolution for Consumer Transactions
in the Borderless Online Marketplace**

**Comments to the Federal Trade Commission
and the U.S. Department of Commerce
from the
National Consumers League
the Electronic Privacy Center
and Consumer Federation of America
June 26, 2000**



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INTRODUCTION

The National Consumers League, the Electronic Privacy Information Center, and Consumer Federation of America¹ commend the Federal Trade Commission and the Department of Commerce for their leadership in exploring and encouraging the development of alternative dispute resolution (ADR) systems to help consumers with complaints concerning transactions in the electronic marketplace. We believe that ADR can provide practical solutions to many of the problems that arise between consumers and vendors, especially in electronic commerce, where the physical distance between the parties may make it costly and difficult to pursue more formal avenues of recourse. Consumers will have more confidence in purchasing goods and services online if they know that there are quick, fair, easily accessible and effective means of resolving complaints.

However, ADR should not be viewed as a substitute for proper conduct in electronic commerce or a way to create a parallel universe for online transactions in which consumers no longer have the rights and protection afforded to them by the legal framework in their home countries. NCL *et al* also believe that the government should set minimum requirements for notice, choice, cost, accessibility, timeliness, independence, decisions, enforcement, and accountability.

¹The nonprofit National Consumers League was founded in 1899 to advocate for consumers' interests in the marketplace and the workplace.

The Electronic Privacy Information Center is a nonprofit public interest research center established in 1994 to focus public attention on emerging civil liberties issues and to protect privacy, the First Amendment, and constitutional values.

Consumer Federation of America is a nonprofit association of some 260 pro-consumer groups, with a combined membership of 50 million people. It was founded in 1968 to advance consumers' interests through advocacy and education.

NCL and CFA have previously submitted comments to the FTC and the DOC in this matter. Both sets of comments cited the resolution on Alternative Dispute Resolution in the Context of Electronic Commerce that was adopted in February 2000 by the Trans Atlantic Consumer Dialogue, a coalition of consumer organizations in the U.S. and European Union countries that was established to provide input to the governments of our respective countries on consumer issues related to cross-border trade. As members of the TACD working group on electronic commerce, NCL *et al* have given careful consideration to the potential benefits and drawbacks of ADR and the basic principles that should be incorporated in developing new ADR systems for electronic commerce. We have also shared our insight and expertise with the U.S. delegation to the Organization for Economic Cooperation and Development as the OECD crafted its Guidelines for Consumer Protection in the Context of Electronic Commerce. Adopted last December, the guidelines include ADR as an important component of the new electronic marketplace.

Our understanding of ADR issues was further enhanced by the presentations and discussions at the public workshop convened by the FTC and the DOC on June 6 and 7, 2000. The following comments provide further thoughts on how ADR systems can best meet the needs of consumers and vendors in the electronic marketplace.

COMPLAINT AVOIDANCE

At the FTC/DOC public workshop, several speakers noted that online vendors can reduce the potential for consumer complaints and the number that are handled by third-party ADR systems by implementing good internal standards for marketing, sales and customer service. We agree that ADR should not be a Band-Aid for problems that should be dealt with at their roots.

The OECD guidelines are helpful in providing basic criteria for businesses to follow.

NOTICE

Online vendors that participate in ADR systems should be required to clearly and conspicuously disclose that information and provide brief explanations of how those systems operate. This information is just as important for consumers to have in evaluating online offers as return policies, warranties, shipping costs and other material facts.

CHOICE

ADR should be an option for consumers, not a requirement either by contract or at the time a dispute arises. NCL *et al* believe that consumers will be attracted to ADR systems that are quick, fair, easily accessible and effective. Conversely, there will be less incentive to create the most attractive ADR systems possible if their use is compulsory. Furthermore, ADR may not be appropriate for every type of problem. For example, instances of fraud or involving systemic deceptive behavior would probably be most effectively dealt with in other ways. Consumers should be free to choose whether and when they would rather take their complaints to government agencies, join class action lawsuits, or pursue other possible avenues of recourse. No compelling reasons have been presented to persuade us that this freedom should be restricted in electronic commerce. Indeed, we believe that the threat of possible legal action provides the strongest incentive for businesses to participate in good ADR systems.

COST

Very little information was presented at the FTC/DOC public workshop about the cost of current ADR systems. However, we are optimistic that ADR can be cost-efficient, especially if it is conducted online. Businesses would surely derive savings in travel, personnel, legal, and other

costs if complaints are handled quickly and without the need for litigation. Economies of scale can also be realized if online vendors share in the cost of creating and/or maintaining ADR systems. Ultimately, resolving consumer complaints must be viewed as part of the cost of doing business. The benefits of doing so are not only savings but profits from future sales by preserving customer satisfaction and loyalty.

At the FTC/DOC public workshops, estimates from NCL and the Better Business Bureau for the amounts of money involved in typical Internet-related consumer complaints ranged from \$300 to \$3,000. We believe that consumers will be more likely to avail themselves of ADR if it is offered at no charge to them, or at most for a nominal fee. Moreover, consumers should not be obliged to pay vendors' costs under any circumstances. The effect of such a requirement would be to damage the viability of ADR as a tool for building consumer confidence in electronic commerce.

ACCESSIBILITY

ADR must be offered to disputants in the languages they understand and in formats that are easily accessible. Instructions should be clearly provided in plain language. Disputants should be able to request assistance and present their cases without the need for elaborate forms, notarization, or other overly burdensome requirements. Options should be available to accommodate different technical capabilities. In some cases it may be necessary to conduct ADR offline, by telephone or other means, if the parties are unable to communicate online. Special provisions must be made for people with different physical challenges.

TIMELINESS

One of the main benefits of ADR is the ability to resolve complaints more quickly than

through more formal legal channels. Reasonable time limits must be set for considering disputes and rendering decisions. ADR systems that "beat" those minimum standards will obviously be more attractive to businesses, for whom time is money, and for consumers, who want their problems to be resolved as quickly as possible.

INDEPENDENCE

At the public workshop we learned that there are many current models for dispute resolution, from companies' own customer service efforts, to informal intervention by government consumer protection agencies, to private programs that may be operated by consumer organizations, trade associations, Chambers of Commerce, Better Business Bureaus or other groups. One principle that all workshop participants embraced was the need to have both the perception and the actuality of fairness. NCL *et al* recommend that to ensure fairness, the personnel who provide ADR services must be properly trained, have no conflicts of interest in the matters before them, and be independent from the parent organizations. Their compensation should not be based in any way on the decisions they make. Where choices of ADR personnel are available, consumers and businesses should have information about them and equal input into who will consider their disputes.

DECISIONS

At the FTC/DOC workshop, many participants, including representatives of businesses, expressed the view that ADR decisions should not be binding on consumers. They recognized the inherent imbalance between the positions of consumers and businesses, no matter how well alternative dispute systems are designed, and the importance of preserving the consumers' rights to "have their day in court." If ADR systems are quick, fair, easily accessible and effective, we

believe that many complaints will be resolved. Given the expense and complications of bringing legal action, especially across national borders, it is likely that only a small percentage of cases would go further. Indeed, experience in the U.S. with the new car lemon laws bears this out.

For example, in California's state certified lemon law arbitration programs last year, about 39 percent of the decisions went against the consumers, but only about 7 percent of those consumers appealed the decisions to court (three separately-operated programs are certified to conduct lemon law arbitration in that state; figures are combined and calculated on the basis of responses to a customer satisfaction survey). At Florida's state-operated lemon law arbitration program in 1998, the most recent date for which statistics are available, 52 percent of the consumers lost their cases, but only 2 percent appealed. Moreover, 52 percent of the cases that were accepted for arbitration were settled between the parties before hearings were scheduled.

Considering the fact that most consumers' disputes concerning online transactions will involve money amounts far less than the price of a new car, it will be even less likely that consumers will appeal negative decisions.

We urge the adoption of standards that require businesses to be bound by ADR systems, however, because that will make the programs even more attractive to consumers.

ENFORCEMENT

There will be much less incentive for consumers to avail themselves of ADR systems if they cannot rely on decisions in their favor to be upheld. Furthermore, decisions that are not binding on the online vendors will be much more difficult to enforce either through a private disciplinary system or through court.

ADR systems should have effective enforcement mechanisms built-in, including removal

of seals or other confidence devices, public exposure, and decisions favoring consumers constituting prima facie evidence in any subsequent legal proceedings.

ACCOUNTABILITY

At the FTC/DOC public workshop some concern was expressed about the privacy of ADR proceedings. While there is no reason why consumers' names should be made public, information about the businesses and their track records could be beneficial to the public, as the reliability reports are from the Better Business Bureau.

At the very least, ADR systems should make public the names of vendors who do not uphold decisions or against whom an inordinate number of disputes are filed. Furthermore, records of all disputes handled by ADR systems should be available to law enforcement agencies, so that they can identify patterns of unfair or deceptive practices on the part of online vendors.

OTHER OPTIONS TO RESOLVE DISPUTES

The panel discussion at the FTC/DOC workshop on credit and debit cards highlighted how helpful consumers' legal charge-back rights and company policies can be in providing redress when problems with transactions arise. NCL *et al* strongly support providing the same dispute rights for consumers using debit cards or other forms of electronic payment as they have when they use credit cards. This would give consumers more power and confidence in making online transactions and reduce the number of complaints that go to ADR systems or other fora.

CONCLUSION

While ADR is not a new concept and is used in many different ways currently to resolve consumer complaints, its use may explode with the growth of the global electronic marketplace.

While NCL *et al* recognize that one model not fit every situation, we believe that most complaints fall into these general categories: "I didn't get it;" "I didn't get the same thing I was promised;" "These terms weren't what I agreed to;" and "It's defective." Basic standards for ADR in electronic commerce are needed to guide the development of quick, fair, easily accessible and effective systems that both businesses and consumers can support. We welcome the opportunity for dialogue and input as this process evolves.

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